
Assembly of States Parties

Distr.: General
29 July 2009

Original: English

Eighth session

The Hague

18-26 November 2009

**Report of the Bureau on the establishment
of an independent oversight mechanism**

Addendum

Introduction

1. This addendum report is submitted pursuant to the mandate given to the facilitator, Mr. Akbar Khan (United Kingdom), on the issue of establishing an independent oversight mechanism for the International Criminal Court (“the Court”), upon his appointment by the Bureau of the Assembly of States Parties (“the Assembly”) at its fifth meeting, on 4 December 2008.

2. At the twelfth session of the Committee on Budget and Finance (“the Committee”), held between 20 and 24 April 2009 at the seat of the Court, the Committee considered the report of the Bureau of the Assembly of States Parties on the issue of establishing an independent oversight mechanism for the International Criminal Court and also received a presentation from the facilitator.

3. On 13 May 2009, the Committee issued the report on the work of its twelfth session. At paragraphs 51-53 of the report,¹ the Committee noted its appreciation for the work accomplished by the facilitator in developing the proposal for an independent oversight mechanism which sought to strike a proper balance between operational and cost effectiveness. While noting that considerable progress had been made, the Committee recommended that further consideration be given to options for financing the oversight mechanism with a view to reducing the proposed budget of €421,295. For example, the Committee suggested that the Bureau explore with the Court the possibility of the secondment of a staff member of the United Nations Office of Internal Oversight Services (OIOS) to the independent oversight mechanism, which would also ensure the independence of the seconded person; that the Court examine the possibility of financing one or both of the proposed positions through redeployment of vacant positions or positions that are currently scheduled to be terminated at the end of the fiscal year; and that closer examination be given to the initial costs of co-operation with the OIOS to determine what core services would be required from the OIOS. Finally, the Committee recommended that, should the Assembly ultimately decide to establish the independent oversight mechanism, a monitoring system be established to ensure that the workload justified the existence of these positions over time.

¹ ICC-ASP/8/5.

4. In order to address the views expressed by the Committee, the facilitator held a further meeting with The Hague Working Group (“the Working Group”) on 23 June 2009. During the informal discussions various positions were expressed with regard to the points raised by the Committee. In addition to the points referred to below, the facilitator advised the Working Group that in order to enable the oversight mechanism to investigate potential misconduct of elected officials as envisaged in “Recommendation 3” of the Bureau’s report,² it would be necessary for the Assembly to either: a) request that the Rules of Procedure and Evidence and the Regulations of the Court be amended; or b) invite the judges to delegate the function to the oversight mechanism. On this particular issue there was a broad consensus for option a). On the remaining recommendations made by the Committee, the Working Group also heard the views of the Court following its prior consultation with the OIOS on the issues raised. In light of its presentation, the Court was requested to provide an updated schedule of costs for the Committee, reflecting the budgetary implications for the first year of establishing the independent oversight mechanism with and without a secondment from the OIOS. This schedule is attached in the annexes.

5. The Working Group reached the following views on the recommendations made by the Committee:

(a) Possibility of the secondment of a staff member of the OIOS to the independent oversight mechanism

6. In response to this recommendation, the Court informed the Working Group that the OIOS was willing to second a P-5 Operations Manager experienced in setting up an investigation unit, as opposed to an investigator. With respect to the initial costs, the Working Group was informed that an Operations Manager could provide training etc. at no additional cost for the first year. If there were an investigation, the cost of US\$1,000 per day would be borne by the Court. The Registry official stated that the Registrar was still in the process of taking a position regarding the possibility of a secondment.

7. There was broad support for the secondment of a staff member from the OIOS to the position of the head of the office of the independent oversight mechanism. It was noted, that this would bring some benefits to the Court during the first year of the mechanism’s operation. Save for the fixed professional staff and travel costs, there would be no additional cost to the Court apart from the cost of any investigation to be taken up. Additionally, the Court could schedule its capacity building through the transfer of knowledge and experience earlier than the end of the secondment period, i.e. through the recruitment of a staff member to work alongside the OIOS person. It was also suggested that, as an additional long-term cost saving measure, the Court staff member, who would be recruited to succeed the OIOS secondee, could be recruited at the lower P-4 level, after establishment of the office and the necessary transfer of knowledge.

(b) Recommendation that the Court examine the possibility of financing one or both of the proposed positions through redeployment of vacant positions or positions that are currently scheduled to be terminated at the end of the fiscal year

8. As regards the redeployment of a post from the Court to the independent oversight mechanism, the Court informed the Working Group that this was not possible as there was no vacant post that could be redeployed. In response to a query as to the possibility of using a P-5 position that in 2009 had been temporarily redeployed in Major Programme VI, the Court indicated that the possibility had also been explored and that the post would need to remain in the Secretariat of the Trust Fund for Victims.

² ICC-ASP/8/2, para. 43 (c).

(c) Recommendation that closer examination be given to the initial costs of co-operation with the OIOS to determine what core services would be required from the OIOS

9. As regards the initial costs of cooperation with the OIOS and what core services would be required, the Court informed the Working Group that such core activities would be those included in annex II to this addendum.

(d) Recommendation to establish a monitoring system to ensure that the workload justified the existence of these positions over time

10. As to the recommendation of the Committee on the need to set up a monitoring system so as to assess the workload of the mechanism vis-à-vis its staff, the Working Group agreed that the oversight provided by the Assembly and the Committee would suffice and that no additional system appeared to be justified at this stage.

11. In light thereof, the Working Group suggested the following amendments to the recommendations set out in the Bureau's report: *(proposed amendments in italics)*

Recommendation 2 (Paragraph 42 of the Bureau's report)³

Setting up the independent oversight mechanism

12. It is recommended that the decision to establish the oversight mechanism incorporate a decision to recruit two oversight mechanism staff, i.e. one staff member who will head the office at the P-5 level and one further support staff member at the P-1 or P-2 level. *Strong consideration should be given to seconding the head of the office from the OIOS during the first year of the office, with a view to transferring knowledge and experience to the staff member to be recruited by the Court.* These staffing levels and grades may be reviewed again by the Assembly once the oversight mechanism has been fully operational for a reasonable period of time. These individuals will begin work six months before the oversight mechanism becomes officially operational so as to develop all its functions, regulations, rules, protocols and procedures and submit them to the Assembly for approval. The recruitment process for the position of head of the oversight mechanism shall be conducted by the Bureau in coordination with the Court. The independent oversight mechanism shall be co-located (but not integrated or subordinated to) with the Office of Internal Audit.

Recommendation 3 (Amendment of paragraph 43 of the Bureau's report⁴ with a new subsection (e))

Scope of the independent oversight mechanism

13. The oversight mechanism itself will be expected to develop the rules governing its work, with the following recommendations being provided for purposes of guidance only:

(e) With regard to the investigation of elected officials it is recommended that the relevant provisions of the Rules of Procedure and Evidence and the Regulations of the Court be amended to remove this function from the judges and to transfer it to the independent oversight mechanism.

³ Ibid., para. 42.

⁴ Ibid., para. 43.

Annex I

Budget Proposed budget 2010 (in euros)

Independent oversight mechanism	Basic	Total with OIOS secondment	Total without OIOS secondment
Professional staff (5% vacancy rate)	231,600	231,600	231,600
General Service staff			
General temporary assistance			
<i>Subtotal staff</i>		<i>231,600</i>	<i>231,600</i>
Temporary assistance for meetings			
Overtime			
Consultants			
<i>Subtotal other staff</i>			
Travel	10,000	10,000	10,000
Hospitality			
Contractual services OIOS (exchange rate July 2009)			52,000
General operating expenses / Supplies and materials / Furniture and equipment	100,000	100,000	100,000
<i>Subtotal non-staff</i>		<i>110,000</i>	<i>162,000</i>
Total		341,600	393,600

Annex II

Detailed breakdown of OIOS cooperation costs (without secondment)

1. Initial support

Capacity building

- ICC Manual working procedures: 15,000
- Training of investigators and relevant managers: 10,000

2. Continuing support

Standing capacity: 27,000 *(based on a forecast of 10 annual cases)*

- Intake assessment
- Planning support
- Assistance with records review
- Interview planning/preparation
- Guidance on IT forensic analysis and other forensic tools
- Support for collection and managing evidence
- Advice on and review of investigation report

Additional support

- Travel and DSA: UN rates
- Specialized forensic tasks i.e. password breaking: Cost
- Access to Investigation Learning Programme: No cost
- Knowledge transfer, including best practices, new procedures, legal analysis and other information updated on a regular basis: No cost

3. First year annual cost **US\$ 52,000 plus additional costs**

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